

**CITY COUNCIL MEETING
MARCH 1, 1995**

APPROVAL OF MINUTES

Minutes of February 1, 1995 and Memorandum from Council Member Davenport challenging the February 1 minutes, specifically Mayor's failure to follow procedure during the regular council meeting of February 1, 1995 are attached for review.

FILE NO. CC-1(b)



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Minutes - February 14, 1995 (Adjourned Regular Meeting), February 14, 1995 (Special Meeting) and February 15, 1995 (Regular Meeting)

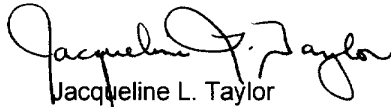
MEETING DATE: March 1, 1995

PREPARED BY: City Clerk

RECOMMENDED ACTION: That the City Council approve the minutes of February 14, 1995 (Adjourned Regular Meeting), February 14, 1995 (Special Meeting) and February 15, 1995 (Regular Meeting) as prepared.

BACKGROUND INFORMATION: Attached are copies of the minutes for February 14, 1995 (Adjourned Regular Meeting), February 14, 1995 (Special Meeting) and February 15, 1995 (Regular Meeting) marked Exhibit A, B and C, respectively.

FUNDING: None required.


Jacqueline L. Taylor
Acting City Clerk

JLT

Attachments

APPROVED: _____



THOMAS A. PETERSON
City Manager



recycled paper

CITY COUNCIL
REGULAR CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
WEDNESDAY, FEBRUARY 1, 1995
7:00 P.M.

EXHIBIT A

1. ROLL CALL

Present: Council Members - Davenport, Pennino, Sieglock, Warner and Mann (Mayor)

Absent: Council Members - None

Also Present: City Manager Peterson, Assistant City Manager Glenn, Community Development Director Schroeder, Public Works Director Ronsko, City Engineer Prima, City Attorney McNatt and City Clerk Perrin

2. INVOCATION

The invocation was given by Pastor Mike Reed, Lodi Avenue Baptist Church.

3. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor Mann.

4. AWARDS / PROCLAMATIONS / PRESENTATIONS

- a) Mayor Mann presented a proclamation to Virginia Snyder, Chairperson of the Lodi East Side Improvement Committee, proclaiming the year of 1995 as "American Bungalow Year". Further, Ms. Snyder announced that the Committee will conduct a housing seminar on April 1, 1995 and a tour of seven Lodi American Bungalows on April 2, 1995 (at which the City Council has been invited to serve as host).
FILE NO. CC-2(s) AND CC-37

5. CONSENT CALENDAR

In accordance with report and recommendation of the City Manager, Council, on motion of Council Member Pennino, Sieglock second, approved the following items hereinafter set forth **except those other wise noted** which were moved to the end of the agenda by the following vote:

Ayes: Council Members - Pennino, Sieglock, Warner and Mann (Mayor)

Noes: Council Members - Davenport

Absent: Council Members - None

- a) Agenda item #E-1 entitled, "Claims - \$1,926,896.56" was removed from the Consent Calendar and discussed and acted upon at the end of the agenda. (Removed by Council Member Davenport.)
- b) The Minutes of January 18, 1995 (Regular Meeting) were approved as written.
- c) Agenda item #E-3 entitled, "Plans and specifications and advertisement for bids for standby generators for water well and storm drain pumping stations for sites 7, 9 and 16" was removed from the Consent Calendar and discussed and acted upon at the end of the agenda. (Removed by Council Member Davenport.)

Continued February 1, 1995

- d) Agenda item #E-4 entitled, "Plans and specifications and advertisement for bids for School Street wastewater main, Oak Street to alley north of Oak Street" was removed from the Consent Calendar and discussed and acted upon at the end of the agenda. (Removed by Council Member Davenport.)
 - e) Agenda item #E-5 entitled, "Specifications and advertisement for bids for purchase of a tractor for the Parks Division" was removed from the Consent Calendar and discussed and acted upon at the end of the agenda. (Removed by Council Member Davenport.)
 - f) Adopted Resolution No. 95-11 rejecting all bids for two utility vehicles for the Parks and Recreation Department, approving amended specifications and authorizing the readvertisement of bids.
FILE NO. CC-12(b) AND CC-300
 - g) Agenda item #E-7 entitled, "Purchase of photocopier for Community Center at Hutchins Street Square" was removed from the Consent Calendar and discussed and acted upon at the end of the agenda. (Removed by Council Member Davenport.)
 - h) Adopted Resolution No. 95-13 accepting the subdivision improvements included in Johnson Ranch, Unit No. 3, Tract No. 2587, as filed July 28, 1994, in Book 32 of Maps and Plats, Page 12, San Joaquin County Records.
FILE NO. CC-46 AND CC-300
 - i) Agenda item #E-9 entitled, "Agreement with Cellular One for lease of property at 1331 South Ham Lane" was removed from the Consent Calendar and discussed and acted upon at the end of the agenda. (Removed by Council Member Warner.)
 - j) Agenda item #E-10 entitled, "Renewal of contract with 3M National Advertising Company for City-leased advertising billboards" was pulled from the agenda pursuant to staff's request.
 - k) Amended the bylaws for the Gang Alternative Project (GAP).
FILE NO. CC-2(q)
 - l) Adopted Resolution No. 95-14 approving the revised class specification for Fire Inspector.
FILE NO. CC-34 AND CC-300
 - m) Agenda item #E-13 entitled, "Revise class specification and class title change from Fire Administrative Officer to Fire Division Chief" was removed from the Consent Calendar and discussed and acted upon at the end of the agenda. (Removed by Council Member Davenport.)
 - n) Agenda item #E-14 entitled, "Approve plans and specifications and advertisement for bids for the Transit Administration Offices" was removed from the Consent Calendar and discussed and acted upon at the end of the agenda. (Removed by Council Member Davenport.)
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6. PUBLIC HEARINGS

- a) Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Mann called for the Public Hearing to consider Reimbursement Agreement #RA-95-02 for public improvements for Sunwest Plaza Shopping Center.

ACTION:

Due to the need for additional noticing requirements, the City Council, on motion of Council Member Sieglock, Pennino second, continued the public hearing to March 1, 1995 to consider the Reimbursement Agreement #RA-95-02 for public improvements for Sunwest Plaza Shopping Center by the following vote:

Ayes: Council Members - Pennino, Sieglock, Warner and Mann (Mayor)

Noes: Council Members - Davenport

Absent: Council Members - None

FILE NO. CC-46, CC-90 AND CC-158

- b) (Due to a conflict of interest, Mayor Mann abstained from discussion and voting on the following matter. Mayor Pro Tempore Warner served as Mayor during this matter.)

Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Mann called for the Public Hearing to consider letter from Baumbach & Piazza appealing the Planning Commission's decision to require an eight to ten foot right-of-way dedication for landscaping purposes outside the proposed reverse frontage wall along Turner Road and the formation of a Lighting and Landscaping Assessment District, all at the developer's expense, in the Towne Ranch Development, Phase 5.

Hearing Opened to the Public

1. Roger Stafford, member of the Planning Commission, explained to the City Council the reasons for the Planning Commission's decision on this matter, which was a 4 - 3 vote;
2. Susan Hitchcock, member of the Planning Commission, also discussed the Planning Commission's reasoning on this matter and displayed overheads of various fence locations throughout Lodi, both with and without landscaping;
3. Steven Pechin, Baumbach and Piazza, 323 West Elm Street, Lodi, speaking on behalf of Towne Ranch Associates, spoke in support of granting the subject appeal due to a financial hardship and its understanding of the policy on the matter; and
4. Dennis Bennett, 777 South Ham Lane, Suite L, Lodi, also spoke in support of granting the subject appeal.

Public Portion of the Hearing Closed

ACTION(S):

Council Member Warner made a motion, Pennino second, to grant the appeal of Baumbach and Piazza with the finding that a financial hardship existed and that there were possible misunderstandings regarding the subject policy, to continue with the project as planned by the developers, and further directed staff to work with the Planning Commission to bring back a policy regarding reverse frontage fences and landscaping; however the motion was **rescinded**.

At this point, Public Works Director Ronsko made a suggestion that we consider modifying the street section to provide additional space for landscaping. He stated that staff was preparing a recommendation to be made at a future Council meeting that parking on Turner Road be eliminated. The width formerly used for parking, less that needed for a bicycle lane plus the space between the proposed fence and the back of sidewalk, would provide four feet for landscaping which could reduce the dedication required by the developer.

Council Member Pennino then made a motion to grant the appeal with the finding that a financial hardship existed and that there were possible misunderstandings regarding the subject policy, to put in the required landscaping in the four foot area to be maintained by the City of Lodi and to leave the reverse frontage wall at the current location. The motion **died** for lack of a second.

Further, Council Member Sieglock made a motion, Davenport second, to deny the portion of the appeal in regards to the required eight to ten foot right-of-way dedication for landscaping purposes outside the proposed reverse frontage wall along Turner Road, granted the portion of the appeal regarding the formation of a Lighting and Landscaping Assessment District at the developer's expense under the finding that a financial hardship existed and that there were possible misunderstandings concerning the subject policy, that the City maintain the landscaped area and further that the staff research the reimbursement options to the developer. The motion **failed** by the following vote:

Ayes: Council Members - Davenport and Sieglock
Noes: Council Members - Pennino and Warner
Absent: Council Members - None
Abstain: Council Members - Mann

Therefore, because the motion failed, the subject appeal from Baumbach & Piazza regarding the Planning Commission's decision to require an eight to ten foot right-of-way dedication for landscaping purposes outside the proposed reverse frontage wall along Turner Road and the formation of a Lighting and Landscaping Assessment District, all at the developer's expense, in the Towne Ranch Development, Phase 5 was **denied**. (However, this matter was further discussed and acted upon following the recess as shown below.)

FILE NO. CC-6 AND CC-53(b)

7. INTRODUCTIONS

Council Member Pennino introduced the following students scheduled for appointment to the Greater Lodi Area Youth Commission and presented pins to each:

Heidi Ensminger
Larry Lancaster
Heather Muser
Suzanne Radotic
Jennifer Rios

Carie Crain and Andrew Vincent were unable to attend the meeting.

8. RECESS

Mayor Pro Tempore Warner declared a ten-minute recess and the City Council meeting reconvened at approximately 9:39 p.m.

9. FURTHER DISCUSSION ON PUBLIC HEARING REGARDING APPEAL FROM BAUMBACH AND PIAZZA

- a) (Mayor Mann continued to abstain from discussion and voting on this matter.)

Following the recess, the City Council returned and continued discussion regarding the subject appeal from Baumbach and Piazza regarding the Planning Commission's decision to require an eight to ten foot right-of-way dedication for landscaping purposes outside the proposed reverse frontage wall along Turner Road and the formation of a Lighting and Landscaping Assessment District, all at the developer's expense, in the Towne Ranch Development, Phase 5.

The City Council, on motion of Council Member Sieglock, Warner second, directed staff to work with the developer on alternatives, costs and a compromise solution and adjourned the discussion of this item to Tuesday, February 14, 1995 at 7:00 a.m. prior to the scheduled Shirtsleeve Session of the City Council by the following vote:

Ayes: Council Members - Davenport, Pennino, Sieglock and Warner
Noes: Council Members - None
Absent: Council Members - None
Abstain: Council Members - Mann

FILE NO. CC-6 AND CC-53(b)

10. COMMUNICATIONS (CITY CLERK)

- a) On recommendation of the City Attorney, City staff and/or the City's contract administrator, Insurance Consulting Associates, Inc. (ICA), the City Council, on motion of Mayor Mann, Pennino second, unanimously rejected the following claim and referred it back to ICA:

1. Carrie Fowler, date of loss 11/18/94.
FILE NO. CC-4(c)

Continued February 1, 1995

- b) City Clerk Perrin read the following ABC License:
 - 1. Niata, Inc. (The Opera House, Tracy), to Marlo Kerner & Associates, Inc., Hazel's, 28 South School Street, Lodi, On Sale General Eating Place, Person to Person and Premises to Premises Transfer.
FILE NO. CC-7(f)
- c) The following report was presented to the City Council:
 - 1. Planning Commission report of January 23, 1995.
FILE NO. CC-35(c)
- d) The City Council, on motion of Council Member Sieglock, Warner second, unanimously directed the City Clerk to post for the following vacancy:

Gang Alternative Project (GAP)

James D. Martin

FILE NO. CC-2(q)

- e) The City Council, on motion of Council Member Sieglock, Pennino second, unanimously made the following appointments to the Greater Lodi Area Youth Commission:

Greater Lodi Area Youth Commission

Carie Crain
Heidi Ensminger
Larry Lancaster
Heather Muser
Suzanne Radotic
Jennifer Rios
Andrew Vincent

FILE NO. CC-2(t)

11. **REGULAR CALENDAR**

- a) The City Council, on motion of Council Member Sieglock, Pennino second, introduced Ordinance No. 1605 repealing and re-enacting Lodi Municipal Code Title 6 regarding animal control provisions including language changes from the draft that pot belly pigs are not allowed in the City (any current owners would have six months from the effective date of this ordinance to remove the pot belly pigs), the barking dog provision will state that barking will continue for an aggregate period of five minutes or more duration during any one hour period which disturbs another person, and the number of pets allowed was decreased from five to three pets in addition to the Animal Fanciers Permit allowing two additional pets by the following vote:

Ayes: Council Members - Pennino, Sieglock, Warner and Mann (Mayor)
Noes: Council Members - Davenport
Absent: Council Members - None

Speaking on the matter were the following persons:

- a) Kim Miller, 2 Silverwood Court, Lodi, speaking on behalf of the Animal Friends Connection, indicated its support for the ordinance; however, expressed concern that a sufficient log is not kept on the animals that are picked up, adopted and/or euthanized (a letter was submitted to the City Council which is on file in the City Clerk's office);
- b) Robin Snyder, 2342 West Turner Road, Lodi, expressed complaint on the provision that allows existing pot belly pigs in the City of Lodi. Ms. Snyder has a neighbor who owns a pot belly pig which has become a constant nuisance and disturbance;
- c) Tom Murphy, Stockton, also spoke against allowing pigs within the City of Lodi, including different breeds of pigs;
- d) Marlon DeGrandmont, Lodi, questioned if fish are addressed in the ordinance; and
- e) Robert Mike Wetzel, Lodi, complained that the provision regarding barking dogs does not sufficiently take care of the problem. Ten consecutive minutes is not reasonable and it should instead be addressed as intermittent barking.
FILE NO. CC-6, CC-65 AND CC-149

- b) The City Council, on motion of Council Member Pennino, Warner second, introduced Ordinance No. 1606 creating Chapter 8.20 of the Lodi Municipal Code entitled, "Hazardous Substances; Recovery of Costs" by the following vote:

Ayes: Council Members - Pennino, Sieglock, Warner and Mann (Mayor)

Noes: Council Members - Davenport

Absent: Council Members - None

FILE NO. CC-24(a) AND CC-149

- c) The City Council, on motion of Council Member Sieglock, Pennino second, unanimously authorized staff to negotiate an agreement with Wilbur Smith Associates for engineering services for Phase II of the multi-modal station project.
FILE NO. CC-50(b) AND CC-90

12. VOTE TO CONTINUE WITH REMAINDER OF MEETING FOLLOWING 11 PM HOUR

The City Council, on motion of Council Member Davenport, Warner second, unanimously determined it would continue with the remainder of the meeting following the 11:00 p.m. hour.

13. REGULAR CALENDAR (Continued)

- a) The City Council, on motion of Mayor Mann, Davenport second, unanimously adopted Resolution No. 95-16 authorizing the addition of two contract employees, an Equipment Service Worker and Heavy Duty Equipment Mechanic (in the Public Works Department) for the City of Lodi transit system, for a period of one year including a clause in the contract that if funds were to no longer be available the contract would terminate in 30 days.
FILE NO. CC-34, CC-50(b) AND CC-300

14. ORDINANCES

None.

15. COMMENTS BY THE PUBLIC ON NON-AGENDA ITEMS

- a) Kirk Evans, Administrative Assistant to the City Manager, reminded the City Council and the public that the Third Household Hazardous Waste event is scheduled to be held on Thursday, February 2, 1995 through Saturday, February 4, 1995 at Salas Park. The event will take items for disposal free of charge.
FILE NO. CC-24(d)
- b) John Johnson, 2112 Debbie Lane, Lodi, commented on the ordinance regarding the animal control provisions and felt it was unfair to change the provision that would have allowed grandfathering in pot belly pigs, whereas now they are not allowed. Mr. Johnson asked the City Council to rethink its decision.
FILE NO. CC-16 AND CC-65

16. COMMENTS BY CITY COUNCIL MEMBERS ON NON-AGENDA ITEMS

- a) Council Member Davenport thanked everyone for coming to the meeting and commented on the following matters: (1) Reminded everyone to be ever mindful of the gangs; (2) Alerted the Police Department, City Manager and City Attorney to a possible drug problem at the apartment complex located at 445 Almond Drive. There is apparently someone living in a garage and stealing electricity. Mr. Davenport urged that the City take care of this situation; (3) Had a citizen ask him if he was aware of a petition being circulated regarding the Central City Revitalization project. He is not aware of such a petition and questioned if the City Manager knew anything about the matter. Mr. Peterson said he did not; (4) Commented on a meeting that was held on January 31, 1995 with staff and Michael Freedman with Freedman, Tung & Bottomley and expressed his disappointment that the City Council was not invited. Mr. Davenport would like to know of such meetings so that he may attend if he so desires; (5) Stated that the City Manager has announced his retirement effective August 1, 1995; (6) Reminded the public that the proposed business license tax ordinance is scheduled for the February 15, 1995 City Council meeting. Anyone with questions or comments should contact the Finance Director. He has received many letters regarding the matter and also read the letter to the editor in the Lodi News Sentinel which said that the matter was "unconstitutional"; (7) Questioned when the Finance Department will be moving into the Beckman building. Public Works Director Ronsko responded that it will be in mid-March; (8) Informed the public that the City Council conducted a Shirtsleeve Session on January 31, 1995 in which it discussed the possibility of Lodi becoming a Charter City. Anyone with questions or comments should contact the City Council and/or City staff; (9) Stated that the last year or so there have been verified claims submitted to the City regarding sidewalk accidents. Mr. Davenport hopes that staff will look at each site and take care of any problems; (10) Received letters regarding the proposed business license tax increase; (11) Received one letter regarding the pot belly pig issue; (12) Commented that a report was given regarding the upcoming Household Hazardous Waste event; (13) Asked the Assistant City Manager if he wanted to make an additional report regarding the GrapeLine (Mr. Glenn updated the City Council on the GrapeLine system under discussion of agenda item #H-4); (14) Asked for a status report on the Boys and Girls club building and questioned when it would have its groundbreaking. City Manager Peterson reminded Mr. Davenport that the Boys and Girls Club building is not a City project; however, he would be more than happy to ask Mr. Richard Jones, Executive Director of the Boys and Girls Club, to give a report to the City Council at a future date. Mayor Mann also informed Mr.

Continued February 1, 1995

Davenport that the matter will be going before the Site Plan and Architectural Review Committee (SPARC) in the near future; and (15) Asked for status on the letter he received requesting crosswalks on Fairmont Avenue north of Tokay Street. Public Works Director Ronsko indicated that a reply was mailed to the author of the letter, a copy of which and a cover memo was given to the City Council.

FILE NO. CC-4(c), CC-6, CC-72, CC-96 AND CC-400

- b) City Attorney McNatt responded to comments by Mr. Davenport. The possible drug situation at 445 Almond Drive is currently being addressed. Further, a letter of response is being directed to the author of the letter to the editor who indicated that the proposed business license tax increase is "unconstitutional".

FILE NO. CC-72, CC-96 AND CC-400

- c) Council Member Sieglock reminded Council Member Davenport that the Boys and Girls Club did have its groundbreaking ceremony last year. Further, Mr. Sieglock expressed his congratulations to retiring City Manager Peterson and his wife, Jean. His service has certainly been appreciated and he's done an outstanding job amid the many demands on him from staff, Council and the public. He will be missed.

FILE NO. CC-6

- d) City Manager Peterson informed the City Council that there will be a Shirtsleeve Session on February 7, 1995 regarding the budget schedule. Assistant City Manager Glenn also indicated the need for a Closed Session at that meeting.

17. CLOSED SESSION

Mayor Mann adjourned the City Council meeting to a Closed Session to discuss the following matter:

- a) Threatened Litigation - Department of Toxic Substances v. City of Lodi (PCE)

18. RETURN TO OPEN SESSION / DISCLOSURE OF ACTION

The City Council meeting reconvened at approximately 12:26 a.m., and Mayor Mann disclosed the following action:

Threatened Litigation - Department of Toxic Substances v. City of Lodi (PCE)

No final action was taken on the matter.

FILE NO. CC-200(d)

19. ACTION ON ITEMS REMOVED FROM THE CONSENT CALENDAR

- a) The City Council, on motion of Council Member Davenport, Warner second, unanimously approved the claims in the amount of \$1,926,896.56.

FILE NO. CC-21(a)

Continued February 1, 1995

- b) The City Council, on motion of Council Member Pennino, Sieglock second, approved amending the plans and specifications for bids for standby generators for water well and storm drain pumping stations for sites 7, 9 and 16 and authorized advertising for bids by the following vote:

Ayes: Council Members - Pennino, Sieglock, Warner and Mann (Mayor)

Noes: Council Members - Davenport

Absent: Council Members - None

FILE NO. CC-12.1(b)

- c) The City Council, on motion of Council Member Davenport, Warner second, unanimously approved the plans and specifications for bids for School Street wastewater main, Oak Street to alley north of Oak Street, and authorized advertising for bids.

FILE NO. CC-12.1(c)

- d) The City Council, on motion of Council Member Pennino, Sieglock second, adopted Resolution No. 95-17 authorizing the purchase of one used tractor for the Parks Division and approving allocation of funds for same by the following vote:

Ayes: Council Members - Pennino, Sieglock, Warner and Mann (Mayor)

Noes: Council Members - Davenport

Absent: Council Members - None

FILE NO. CC-12(d) AND CC-300

- e) The City Council, on motion of Council Member Sieglock, Warner second, adopted Resolution No. 95-12 awarding the bid for the purchase of one photocopier, to be installed in the administrative offices of the Community Center at Hutchins Street Square, to the low bidder, Business Office Systems of Stockton, in the amount of \$8,496.09 by the following vote:

Ayes: Council Members - Pennino, Sieglock, Warner and Mann (Mayor)

Noes: Council Members - Davenport

Absent: Council Members - None

FILE NO. CC-12(b) AND CC-300

- f) The City Council, on motion of Council Member Warner, Sieglock second, unanimously authorized the City Manager to execute the lease agreement with McCaw Communications of Stockton, Inc. for the purpose of installing an antenna and a small equipment building on City property and provided that the following changes to the agreement be made:

- The height of the antenna be shown as 80 feet;
- That interference by City be clarified as "physical" interference;
- Provisions be added to allow City to modify easements. Tenant to be responsible for relocation costs; and
- Sight dimensions and area be modified once they are finalized.

FILE NO. CC-90 AND CC-158

20. VOTE TO LIMIT DEBATE

The City Council, on motion of Council Member Sieglock, Pennino second, voted to limit the debate to one minute on the remainder of the Consent Calendar items (#E-13 and #E-14) by the following vote:

Ayes: Council Members - Pennino, Sieglock, Warner and Mann (Mayor)
Noes: Council Members - Davenport
Absent: Council Members - None

21. ACTION ON ITEMS REMOVED FROM THE CONSENT CALENDAR (Continued)

- a) The City Council, on motion of Council Member Sieglock, Pennino second, adopted Resolution No. 95-15 approving the revised class specification and class title change from Fire Administrative Officer to Fire Division Chief by the following vote:

Ayes: Council Members - Pennino, Sieglock, Warner and Mann (Mayor)
Noes: Council Members - Davenport
Absent: Council Members - None

FILE NO. CC-34 AND CC-300

- b) The City Council, on motion of Council Member Warner, Pennino second, approved the plans and specifications for bids for the Transit Administration Offices and authorized advertising for bids by the following vote:

Ayes: Council Members - Pennino, Sieglock, Warner and Mann (Mayor)
Noes: Council Members - Davenport
Absent: Council Members - None

FILE NO. CC-12.1(c)

22. ADJOURNMENT

There being no further business to come before the City Council, Mayor Mann adjourned the meeting at approximately 1:00 a.m., Thursday, February 2, 1995 to Tuesday, February 14, 1995 at 7:00 a.m.

ATTEST:


Jennifer M. Perrin
City Clerk

RECEIVED

93 FEB -3 PM 4:02

SCOTT M. PERRIN
CITY CLERK

M E M O R A N D U M

TO: BOB MC NATT, CITY ATTORNEY
FROM: Ray Davenport, Council Member
DATE: February 3, 1995
SUBJ: MAYORS FAILURE TO FOLLOW PROCEDURE DURING THE REGULAR COUNCIL MEETING OF FEBRUARY 1, 1995, SPECIFICALLY, VIOLATIONS OF CITY RESOLUTION N. 93-35, ORDINANCE NO. 1566 AND RULES FOR PERSONNEL ADMINISTRATION, ARTICLE XIII, SECTION 13.02.

Complaint and Dissent Pursuant to City Ordinance 1566
Section 2.04.170.

City Resolution 93-35(b) specifically, states the Chair must recognize any member who seeks the floor when appropriately entitled to do so.

Section F(1)-Call for orders of the Day. States:

any member may demand that the agenda be followed in the order stated therein. No second is required and the chair must comply unless the council or board by majority vote, sets aside the orders of the day.

Section F(5) Point of Order. States:

Any member may require the chair to enforce the rules of the council or Board by raising a point of order. The point of order shall be ruled upon by the chair.

City Ordinance No. 1566 Section 2.04.100 sets out the order of business including consent calendar.

The Mayor is not following the above rules. During the February 1, 1995, council meeting the Mayor did not follow the agenda order in regard to the consent calendar, nor was a proper motion made and acted on by council members Pennino and Sieglock. Additionally, the Mayor did not properly recognize council members and properly rule on points of order when called upon to do so by the writer.

All actions require a motion, second, discussion and vote, the Mayor misuses his power to repeatedly attempt to stifle members not in his favor by circumventing or cutting short the above referenced City resolution and ordinance. This conduct by the Mayor is unacceptable. If he cannot observe the rules and procedure and honor his duties and responsibilities in regard to the orderly conducting of the meeting under the aforementioned relevant sections of the City ordinance and resolutions he should surrender his position as Chair and presiding officer.

Likewise the Mayor should discipline council members Pennino and Sieglock for rudeness, unprofessionalism, lack of decorum and not abiding by the aforementioned City Rules, Procedures and Laws.

The Mayor and other named council members are interfering with and harassing the writer by knowingly, willingly and by conspiracy to place items pulled from the consent calendar by this council member at the end of the meeting after the public has gone home, the Cable T.V. cameras are gone and executive session is concluded. This deprives the council member an avenue of communication with his constituents.

This above action is improper, unfair and self serving and demonstrative of the fact that ostensibly the Mayor and council members Pennino and Sieglock continually attempt to conceal comments, truth and meaningful discussion on any and all consent calendar items. This pattern has existed repeatedly since December, 1992, and should not be tolerated.

Section G, specifically imposes the burden on the chair to prevent abuse of privilege and be courteous and fair. Council members Mann, Pennino and Sieglock are abusing privileges, not courteous nor fair. Their conduct at meetings is counter productive and disruptive. This appears to be fueled by City Manager, Tom Peterson who apparently condones and promotes lack of respect, and improper decorum by his department heads in regard to council members not in his favor. An example is Mr. Ronsko, seeking a council member's attention to bait him, looking directly at a council member not in his favor and intentionally, "flagging him the bird", under the false pretense of adjusting his glasses. In reality Mr. Ronsko is engaging in non-verbal, non-protected speech rising to the level of an insult and fighting words as his true intention is communicated, "F--k you". This is unacceptable conduct by Mr. Ronsko. Normally such "baiting" tactics can be ignored, the problem is City Manager

Peterson condones such conduct demonstrated by Department Head Ronsko and attempts to excuse it. Council Member Pennino also condones Mr. Ronsko's unprofessionalism and distasteful conduct. Mr. Ronsko is also equally antagonist and intentionally name calls and attempts, improperly to engage in non productive argumentative and demeaning personal character assassination at will.

This council member has previously pointed out Mr. Ronsko has engaged in this conduct on video, at council meetings and has a history of this actionable, non-protected gesture, using it against anyone not in his favor. Mr. Ronsko again engaged in this conduct at the regular meeting February 1, 1995. This council member has requested Mr. Ronsko refrain from such conduct on several occasions, but he refuses to observe the request.

The City Manager has been noticed regarding Mr. Ronsko's egregious, outrageous conduct which translates to lack of respect, but refuses to discipline, counsel or control Mr. Ronsko. Also, the Mayor and other council members have been noticed of Mr. Ronsko's improper conduct on several occasions. This conduct and abuse simply must be addressed and stopped. A City Counsel member is not required to be constantly subjected to Mr. Ronsko's harassment and abusive conduct.

It is recommended Mr. Ronsko and the City Manager be fired for willfully and wantonly engaging in such disrespect, this offensive conduct amounts to insubordination, violative of City Rules, Ordinances, Resolutions and Laws. Disciplinary causes of actions may be found in rules for Personnel Administration Article XIII, Disciplinary Proceedings:

Section 13.02 J states:

Discourteous treatment of the public or City employee or disorderly conduct on City Property or on City Business including fighting, or using profanity, intimidation, abusive or threatening language is cause for disciplinary action up to and including discharge of any employee.

Mr. Peterson has a duty to discipline Mr. Ronsko, failure in performance of his duty is grounds for discharge.

Mr. Ronsko is in violation of Personnel Rules Section 13.02 J,D,E,K and other relevant sections.

Mr. Ronsko already is charged with (and substantial evidence exist) unauthorized use of public funds for personal use and gain in regard to having city tree trimmers do personal work at his home and repair of certain city employees chainsaws by city employees on city time. Other incidents may exist.

This aforementioned conduct and abuse by Mr. Ronsko simply must stop. In the event this dissent and formal complaint is ignored or taken lightly further legal action will follow.

The council pays the City Manager approximately \$120,000.00 a year additional, Mr. Ronsko takes from the City coffers approximately \$110,000.00 a year, combined, a quarter of a million dollars is spent annually on these two individuals.

Mr. Ronsko's conduct, supported and condoned by the City Manager is ludicrous, repeatedly engaging in uncordial juvenile jesters while receiving citizens hard earned tax monies is not the purpose or conduct these men were hired to do. The remedy is easy, simply apologize and refrain from further juvenile activity of making obscene gestures and name calling. Malicious "baiting" by Mr. Ronsko is also irresponsible, unprofessional conduct, not in the course and scope of his employment and actionable both civilly and under the above City personnel rules.

It is one thing to engage in organized discourse at public meetings, it is quite another for a subordinate employee, as Mr. Ronsko, to go unfettered with malicious harassment, disrupting, elected council members official business by discourteous treatment, disorderly conduct and abusive or threatening language and interfering with a council members job. No justification exists for Mr. Ronsko's repeated abusive conduct. No council member should have to be subjected to or be forced to endure the abusive treatment projected by Mr. Ronsko during the course and scope of the council member's official duties.

Alternatively, if Mr. Ronsko has a habit of making abusive and obscene gestures due to a mental handicap or physical affliction perhaps he should seek counseling and therapy so that his conduct and gestures will not be misconstrued and his conduct will be ignored due to his mental or physical infirmity or medical condition, ie. terets.

Mr. Ronsko's modus operandi of gaining a persons attention, looking directly at them, "adjusting" his glasses with his middle finger while at the same time casting and signaling a

contemptuous look and portraying a snide smirk on his countenance suggests and conveys intent and transmits the message of disrespect to any reasonable man, commonly known as "flagging the bird" or making an obscene offensive gesture. This improper malicious conduct and intentional harassment by Mr. Ronsko must cease.

cc: City Council Members